

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI**

VIDEO CONFERENCING HEARING HELD BY CORAM:

**Manoj Saunik, Hon'ble Chairperson, MahaRERA,
Mahesh Pathak, Hon'ble Member-1, MahaRERA,
Ravindra Deshpande, Hon'ble Member-2, MahaRERA**

SUO MOTU CASE NO. SM12500050

EXISTING PROMOTER M/S CHARMEE ENTERPRISES
INCOMING PROMOTER 7 FIREFLIES PRODUCTION LLP
PROJECT NAME A AND O FLORANTE
PROJECT REGISTRATION NO. P51800008290

**Coram: Manoj Saunik, Hon'ble Chairperson, MahaRERA
Mahesh Pathak, Hon'ble Member-I, MahaRERA
Ravindra Deshpande, Hon'ble Member-II, MahaRERA**

Advocate M. M. Vashi present for incoming promoter.
None present for the existing promoter.

ORDER

May 16th, 2025

(Date of hearing – 08.04.2025 - matter was reserved for orders)

1. The existing promoter herein had registered the project namely "A AND O FLORANTE" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("said Act") of Real Estate Regulatory Authority ("RERA") bearing MAHARERA Registration No. P51800008290 (hereinafter referred to as the "said Project").
2. The details of the captioned project are briefly mentioned in the table below for ease of reference:

Project No.	P51800008290
Project Name	A AND O FLORANTE

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Project status	Ongoing projects
PCD¹ & RCD²	PCD: 31.12.2020 RCD: 30.12.2022
Plot Number/ Survey Number	CTS 1pt, 2,2/1 TO 2, 3, 3/1 TO 3, 4, 4/1 TO 17, 5, 7PT, 7/1 TO 10, Village: Andheri, Taluka: Andheri, District: Mumbai Suburban
Area	2460.98 square meters
Complaints in the Project	No complaints filed before the Authority.
Total number of buildings	1 building comprising of 20 floors.
Total number of apartments	113
Disclosure of sold/unsold inventory	48 sold units as per Form 3 dated 28.07.2017 uploaded by the Existing promoter on the MahaRERA project registration webpage.

3. On 01.11.2024, the Incoming Promoter has made an application bearing application number REA518165469 seeking new registration under section 3 of the RERA Act. As per Order no. 50/2024 dated 10.01.2024, the incoming promoter disclosed that the project number P51800008290 is already registered on the same aforesaid piece of land. The incoming promoter brings to the notice of the Authority that the SRA Authority vide their order dated 20.01.2023 terminated the existing promoter M/s. Charmee Enterprises and allowed the applicant society i.e. "Om Shree SRA Co-op Housing Society" to appoint new developer of the choice in accordance with rules, regulation and policy of Slum Redevelopment Authority. The captioned case was heard on 08.04.2025 wherein the following roznama was recorded by the Authority:

"Senior advocate M.M. Vashi appeared for the new promoters and made his submissions. The promoters are given time to file their written submissions in a week. subsequent to which the matter shall be reserved for orders."

4. The Incoming Promoter has filed written submissions which are perused by the Authority and are taken on record. The submissions in brief are as follows:

¹ PCD - proposed completion date

² RCD - revised proposed completion date

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A. Termination of existing promoter and appointment of the incoming promoter by SRA

- i. That government of Maharashtra is the owner of the project land and the applicant is undertaking redevelopment of the project land under the provisions of Regulation 33 (10) read with Appendix IV of the Development Control and Promotion Regulations, 2034 (DCPR).
- ii. That the project land is declared as a slum area by virtue of notifications issued under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.
- iii. That the project land was occupied by 172 (One Hundred and Seventy-Two) slum structures and the slum dwellers therein formed themselves into a co-operative housing society namely '*Om Sai Co-operative Housing Society (Proposed)*' which is now registered under the provisions of the Maharashtra Co- operative Societies Act, 1960 bearing no. MUM/SRA/HSG/(TC)/11338/2007 dated 3rd July, 2007.
- iv. That the existing promoter was appointed as the developer to undertake the redevelopment of the project.
- v. That under a Letter of Intent (LOI) bearing no. SRA/ENG/813/KE/ML/LOI dated 4th June, 2007 issued by SRA, SRA had sanctioned the slum rehabilitation scheme on the said Land under the said Provisions in favour of the existing promoter and the LOI was further revised by the SRA on 27th January 2010.
- vi. That by an Order dated 20th January, 2023 passed by SRA in the proceedings initiated under the Section 13 (2) of the Slum Act, SRA has terminated the appointment of the existing promoter as the developer Due to failure of them to implement the said Scheme and due to breach of the terms and conditions of the said LOI, non-payment of rent to Slum Dwellers, inordinate delay and non-performance by the Erstwhile Developer to carry out the Scheme.

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- vii. That under resolution passed by the society in the general body meeting held on 12th September, 2023 in the presence of Assistant Registrar, SRA, the society confirmed the appointment of the incoming promoter herein as the new developer for the project.
- viii. That the incoming promoter has prepared and submitted the requisite scheme for the redevelopment of the said Larger Land to the SRA and in pursuance thereof the concerned authorities have issued requisite approvals and further the SRA issued Revised letter of Intent dated 13.03.2024 in favour of the incoming promoter thereby appointing the incoming promoter herein as the new developer in respect of the captioned project.
- B. Proposal of the incoming promoter for construction on the project land:
- i. That the incoming promoter has envisaged to construct a composite multi storey residential cum commercial building/s on the project land which are as follows:
1. 2 (two) rehab buildings out of which (i) one rehab building shall consist of or known as Wing A and Wing B comprising of ground plus 14 upper floors or such floors and (ii) another rehab building known as Wing 'E' comprising of ground plus 11 upper floors or such additional floors.
 2. 1 (one) sale building consisting of 2 (two) wings viz. Wing C and Wing D comprising of the Basement Floor + 14 upper floors, which is to be named as "**Simran Enclave**". In addition to the Free Sale Area, the Sale Building/s may have certain rehabilitation units comprising of rehab area.
 3. That the SRA has issued an Intimation of Approval in favour of the Applicant vide its letter dated 22nd March, 2024 bearing no. SRA/ENG/2523/KE/ML./ AP.
 4. That in addition to the above, the Applicant is entitled to construct units on the said Larger Land, which would be available for sale to the Applicant in the open market.

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5. That the SRA has thereupon re-endorsed the Commencement Certificate dated 25th September, 2013 bearing number SRA/ENG/2523/KE/ML/AP on **26th March, 2024** in favour of the Applicant and thereby has permitted the Applicant to commence construction of the composite building viz. Wings A to E

C. Removal of the existing promoter:

- i. That the existing promoter failed to comply with the obligations of SRA, the SRA has accordingly terminated the appointment of the existing promoter; and the third party rights, if any created by the existing promoter without complying with such obligations of the SRA are not only illegal but also bad in law.
- ii. The relevant portion of the Order 20.01.2023 issued by the SRA Authority is as below:

"ORDER

- 1. The Respondent no.1 i.e. M/s. Charmee Enterprises is hereby terminated as developer of subject SR Scheme at land bearing CTS no. 1(pt), 2, 2/1 to 2, 3, 3/1 to 3, 4, 4/1 to 17, 5, 7 (pt), 7/1 to 10, 8, 8/1 to 16 of Village Vile Parle – East, Swami Nityanand Marg, Sambhaji Nagar, Opp. Vijay Nagar Society, Andheri- East, Mumbai- 400 069 for Om Shree Sai SRA CHS.*
- 2. The Applicant Society is at a liberty to appoint new developer of their choice in accordance with the rules, regulation and policy of Slum rehabilitation authority.*
- 3. The newly appointed developer to reimburse the actual expenses incurred by the Respondent no.1 in respect of the subject SR Scheme till date in accordance with the provisions of section 13(3) of the Maharashtra Slum Areas (I,C & R) Act, 1971."*

- D. That transfer of project from one developer to other developer under the Slum Act is not transfer of the same project started by the existing promoter.

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- E. That with regards to the 3rd and 4th point of the letter of intent the slum authority had put a condition that incoming promoter will have to pay the amount borrowed by the existing promoter from ECL finance Limited and also pay the pending rent to the slum dwellers on the project land. Accordingly, incoming promoter has paid the loan amount borrowed by the existing promoter from the ECL finance Limited and have been paying rent to slum dwellers
- F. As far as the 46 flat purchasers are concerned neither in the 13(2) order nor in the letter of Intent, the slum authority has imposed any condition requiring Applicant to look into the interest of 46 flat purchasers.
- G. The incoming promoter are not admitting that such 46 flats booked with the existing promoter and thus their alleged liability cannot be fastened on incoming promoter.
- H. That as per the revised LOI dated 13.03.2024, the incoming promoter is entitled for undertaking redevelopment of the project land. Further, one of the terms of the revised LOI dated 13.03.2024 clearly stipulates and directs the incoming promoter to apply to MahaRERA Authority for registration of the project and submit the RERA registration certificate to the SRA.
- I. In view thereof, the incoming promoter has made an application bearing application number REA518165469 seeking new registration under section 3 of the RERA Act for project on the same land of the captioned project.
- J. That the incoming promoter relies on an order dated 27.03.2024 passed by the MahaRERA Authority in Suo moto case nos. 300 and 301 of 2024 and on an order dated 01.12.2014 passed by the Hon'ble High Court of Judicature at Bombay under various connected matters including under the *NOTICE OF MOTION NO. 961 OF 2013 IN SUIT NO. 262 OF 2012 between Vaidehi Akash Housing Pvt.Ltd. ...Applicant / Plaintiff vs. New D.N. Nagar Co-op.Housing Society Union Ltd. & Ors. ...Defendants.*

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K. That in light of the above submissions the incoming promoter prays for grant of a fresh registration certificate.

5. From the facts and the submissions made by the Parties herein, the issue that needs to be considered is *whether the change of promoter applications are maintainable under section 15 of the Act?*
6. In order to deal with the issue above it would be first important to examine Section 15 of the said Act. The Section 15 is reproduced hereinbelow for ease of reference:

"15. Obligations of promoter in case of transfer of a real estate project to a third party –

(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation – For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

From the plain reading of section 15 it is clear that this section is applicable in cases where there is a transfer of a real estate project from an Existing Promoter to a new developer i.e. Incoming Promoter. In the present case the said Project

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is not transferred to the Incoming Promoter (*new developer*) by the Existing Promoter, but the Incoming Promoter is being appointed by the society and SRA who is the Planning Authority has confirmed the appointment of the Incoming Promoter herein. Further the Existing Promoter was terminated by the society and SRA on account of various defaults and failure to implement the SRA scheme for redevelopment of the society.

7. Thus, the captioned case was heard and is not a case of voluntary transfer by the Existing Promoter to the Incoming Promoter. This section 15 deals with voluntary transfer, therein listing out the pre-conditions that must be fulfilled before which an Existing Promoter shall transfer to the Incoming Promoter. Thus, a change in promoter as envisaged under section 15 cannot be made applicable here. The reason for the same being not applicable is that the Existing promoter has been terminated and the Incoming Promoter has been newly appointed by the SRA.
8. The issue that now comes up is *whether the Incoming Promoter as appointed by the the society and confirmed by SRA can be regarded as a Promoter under the said Act?*
9. The society vide their resolution dated 12.09.2023 has terminated the Existing Promoter. From the facts on record the same has not been challenged. This being the case, the captioned project is today without a Promoter, in effect the project cannot proceed until there is a new promoter. It is not the case that the Existing Promoter is challenging the termination.
10. Thus, there is therefore a situation that there is no promoter in the captioned project and hence there is no entity that can carry the the captioned project forward. The existing slum dwellers are dishoused and have yet to be provided with rehabilitation housing. This appears to be one of the main reasons for the SRA to have terminated the Existing Promoter. The Authority recognizes that it has no role in regulating the alternate / rehabilitation housing to be provided to the dishoused slum dwellers. However, the Authority cannot overlook the

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fact that there is a need to ensure that they are provided with houses urgently. The very scheme of the SRA is such that rehabilitation housing is financed and constructed by the developer from the proceedings of the sale of the free sale component. It is the promoter in SRA projects who constructs the rehabilitation houses and finances those by selling houses in the free sale component. In the absence of the promoter this scheme cannot be operationalized. This situation violates the spirit of the legislation. The whole aim and objective of this legislation as laid out in the preamble is to promote the real estate sector in an efficient and transparent manner and to protect the interest of consumers in real estate sector. In the event that a project is devoid of a promoter the very objective of promoting efficiency of the sector is compromised. Every project must have a promoter which is either a private or a government entity who carries the project forward delivering the promised homes which is in the interest of the consumers.

11. In this particular case it is the SRA that is mandated to recognize the Promoter and provide him with the legal Authority to enter upon the land which is declared as slum and to cause to construct both the rehabilitation component and the sale component. It is the SRA which subsequent to construction of rehab and sale component enables the transfer of the lease or conveyance of the underlying land to the respective societies. The SRA in this case has passed an order appointing the Incoming Promoter as the new developer. In effect it is this appointee who will now have rights to enter upon the land construct the same and subsequently enable conveyance to the societies. Thus, the Incoming Promoter now has the legal mandate to carry the captioned project forward.
12. Since the Incoming Promoter has been appointed by SRA he would now have to perform the duties and obligations of a Promoter as defined in the said Act. It would be important here to examine section 2(zk) (i) & (ii) which is reproduced hereinbelow for ease of reference:

(zk) promoter means –

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- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

From the above it is thus clear that since it is the Incoming Promoter who would now construct the buildings and offer them for sale will have to be recognized as the promoter under the said Act to enable him to perform his duties and also enable the fastening of obligations onto him. Further section 3(1) of the said Act needs to be examined which is reproduced hereinbelow for ease of reference:

"Section 3 - Prior registration of real estate project with Real Estate Regulatory Authority:

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act."

This section mandates that advertising, marketing, booking, selling and all other such related activities can only be done by the promoter. Hence in this case for the captioned project to move forward and to enable the Incoming Promoter to market advertise and sell the project the Incoming Promoter would have to be recognized as a promoter. **Thus, the issue at para No. 8 is answer in the affirmative.** The Incoming Promoter as appointed by SRA is to be recognized as Promoter for said Project Nos. 1 & 2.

13. The issue that now comes up is as to the fate of the existing allottees of the Existing Promoter. The Authority is mandated to protect the interest of these allottees. Since the Existing Promoter has been terminated and the Incoming Promoter has been appointed by SRA the issue that needs to be dealt with is as to *who would be responsible for the obligations towards the earlier allottees?* In this case since the appointment of the Incoming Promoter does not fall under section 15 the obligation towards the allottees cannot be fastened on the Incoming Promoter. With this being the situation, it cannot be said that just

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because it is a change of promoter not falling under section 15 and instead is a case where the Existing Promoter has been terminated by SRA the rights of the allottees stands extinguished.

14. While terminating the existing promoter vide order dated 20.01.2023 to the Incoming Promoter the SRA has clearly directed that the Incoming Promoter is to reimburse amounts spent by the Existing Promoter. The amounts to be reimbursed would be based on the valuation of report of the government approved valuer who shall value the expenditure incurred by the Existing Promoter. Thus, the Incoming Promoter is now under an obligation to ensure all expenditure incurred on the captioned project by the Existing Promoter is reimbursed to him. The Existing Promoter is to then fulfill all the obligations towards the existing allottees. With this being the scenario as envisaged by the SRA the existing allottees stand protected and can enforce their claims against the Existing Promoter.
15. As mentioned earlier the Incoming Promoter on assuming the role of the promoter will not be saddled with the obligations of the existing allottees of the Existing Promoter. In order to ensure that there is complete separation of the obligations and duties between these two promoters the Authority directs the Secretary, MahaRERA to keep the registration of the captioned project i.e. **P51800008290** as allotted to the Existing Promoter in **abeyance**. This would ensure that the Existing Promoter continues to remain under the regulatory oversight of the Authority till he fulfills the obligations towards the existing allottees of the captioned project. The Existing Promoter shall not advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the captioned project.

FINAL ORDER


16. Therefore, after considering the aforementioned observations and provisions of the Act, the materials placed on record, the facts of the case and submissions made by the Parties, the Authority passes the following order:

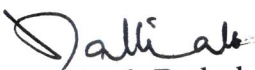
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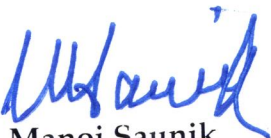
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- A. The incoming promoter is directed to comply and fulfill all the requisites intimated to them in response to their project registration application number REA518165469 as per rules and procedures laid down under the said Act.
- B. A new / fresh registration number to be issued to the incoming promoter after due scrutiny of the registration application filed by them.
- C. The incoming promoter to open a new designated bank account as per rules and procedures laid down under the said Act for execution of the project.
- D. The Secretary, MahaRERA is directed to keep existing registration of the captioned project no. **P51800008290** allotted to the existing promoter in **abeyance** till further orders.
- E. The existing promoter shall not advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the captioned project.
- F. The existing promoter is directed to fulfil all its obligations towards existing allottees and settle all their claims pertaining to respective bookings made by them in the captioned project.
- G. The allottees existing as on the date of this order are at liberty to approach the Authority in the event of non-compliance of this direction by the existing promoter.
- H. No order as to cost.


Ravindra Deshpande
Member-II, MahaRERA


Mahesh Pathak
Member-I, MahaRERA


Manoj Saunik
Chairperson, MahaRERA